

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**NUON CHEA'S RULE 87(4) REQUEST TO ADMIT NINE DOCUMENTS
(CHINESE AND THAI SOURCES ON VIETNAM'S AGGRESSION VIS-À-VIS
CAMBODIA)**

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I. INTRODUCTION

1. Pursuant to Internal Rules 87(3) and (4), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit the instant request before the Trial Chamber to have admitted into evidence nine documents relevant to Case 002/02. These documents are drawn from Chinese and Thai sources and focus on issues including, *inter alia*, Vietnam’s aggression towards Cambodia.

II. APPLICABLE LAW

2. According to Rule 87(1), all evidence is admissible, unless otherwise provided in the Internal Rules. Pursuant to Rule 87(3), the Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under the law, or if it is intended to prolong proceedings or is frivolous. To satisfy the requirements of Rule 87(3), the proposed evidence needs only to be *prima facie* relevant and reliable.¹
3. Pursuant to Rule 87(4), a party may, at any stage during the trial, request the Chamber to “summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3).
4. While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial,² the Trial Chamber has interpreted this provision as also encompassing evidence which was available before the opening of the trial but which could not have been discovered earlier with the exercise of due diligence can be admitted.³ The Chamber has held that where the relevance of a person’s testimony was revealed but by “minimal information” before the opening of the trial while more

¹ **E289/2**, ‘Decision on Civil Party Lead Co-Lawyers’ Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan’s Response (E289/1)’, 14 Jun 2013, paras. 3, 6 (“Decision on Rule 87(4) Requests”).

² The Chamber specified that the opening of the trial in Case 002 was the initial hearing, which started on 27 June 2011. **E307/1**, ‘Decision on Parties’ Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists of Evidence (E305/3)’, 11 Jun 2014 (“Decision on Joint Request for Clarification”), para. 2; **E307/1/2**, ‘Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)’, 21 Oct 2014, para. 6.

³ **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

detailed information was only available after the opening of the trial, the testimony in question will be considered unavailable before the opening of the trial.⁴

5. Where evidence was available before the opening of the trial, the Trial Chamber has held that it may nevertheless be admitted where the interest of justice so require, in particular where it is exculpatory and requires evaluation in order to avoid a miscarriage of justice,⁵ where it closely relates to material already before the Chamber and the interest of justice requires that the sources be evaluated together,⁶ or where the other parties do not object to the evidence.⁷

III. ARGUMENT

A. Summary of Proposed Evidence

(i) Document 01

6. **Document 01** is an article entitled ‘Vietnam’s Ambition of Expansion Reflected in the *Complete Map of the Unified Đại Nam*’ posted in China’s mainstream newspaper, *People’s Daily* (also ‘Renmin Ribao’), on 19 February 1979.⁸ The article states that after the liberation of Saigon in May 1975, Vietnam wanted to carry on with its dream of creating an “Indochina Federation”. On 2 November 1975, *Nhân Dân*, the official newspaper of the Communist Party of Vietnam, publicised the ‘Complete Map of the Unified Đại Nam (Đại Nam Nhất Thống Toàn Đồ)’ made by the Nguyen Dynasty government in early 1800s. This map shows that today’s Laos and Cambodia were part of the territory claimed by the empire of Vietnam in the 1800s. The *People’s Daily* article remarks that *Nhân Dân*’s publication of the map shows Vietnam’s expansionist ambition in the region. It also remarks that the Cambodian people were not fooled by Vietnam’s proposal of the so-called “special relationship” and refused to join the “Indochina Federation”. which angered Vietnam, who subsequently invaded Cambodia.

⁴ T. 7 Dec 2015 (TC Ruling, **E1/363.1**), p. 49, lns. 2-8.

⁵ **E307/1**, Decision on Joint Request for Clarification, para. 3; *accord* **E190**, ‘Decision Concerning New Documents and Other Related Issues’, 30 Apr 2012 (“Decision on New Documents”), para. 36; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

⁶ **E289/2**, Decision on Rule 87(4) Requests, para. 3; *accord* **E190**, Decision on New Documents, para. 32.

⁷ **E289/2**, Decision on Rule 87(4) Requests, para. 3.

⁸ ‘Vietnam’s Ambition of Expansion Reflected in the “Complete Map of the Unified Đại Nam” (从“大南一统全图”看越南的扩张野心)’, *People’s Daily* (人民日报), 19 Feb 1979, p. 6 (**Attachment 01**).

(ii) Document 02

7. **Document 02** is a *People's Daily* commentary in July 1978 entitled 'Why Vietnamese Authorities Provoked Viet Nam-Kampuchea Border Conflict'.⁹ This article comments on the nature of the conflict, Vietnam's ambition in Southeast Asia, and its perfidious behaviour and propaganda efforts. In particular, it provides information on Vietnam's conduct behind the scenes during the negotiations with Cambodia on the border issues:

In 1966, Viet Nam and Kampuchea, then known as Cambodia, negotiated an agreement on the boundary question. On May 31, 1967, the Central Committee of the South Viet Nam National Front for Liberation issued a statement which recognizes and respects the territorial integrity of Cambodia within the existing frontiers. On June 8, 1967, the Government of the Democratic Republic of Viet Nam also issued a statement recognizing the existing boundary line between Viet Nam and Cambodia. This was followed by a letter from Premier Pham Van Dong 12 days later (June 20) and one from President Ho Chi Minh on June 23, 1967, to the then Cambodian leader, reaffirming Viet Nam's recognition of the territorial integrity of Cambodia within the present borders. [...]

However, following the end of the war of resistance against U.S. aggression, [...] Viet Nam invaded and occupied Kampuchea's Wei Island in 1975 and has since then made incessant encroachments upon its territory. In the 1976 negotiations between Viet Nam and Kampuchea, the Vietnamese authorities openly went back on their commitment in 1966 and 1967 which recognizes and respects the existing Kampuchean boundary line. They said that the agreement reached with Kampuchea in 1966 was made under pressure of having to carry on a war against U.S. imperialism. What a convenient piece of perfidy! It is a typical case of bad faith designed to achieve a specific political end. On top of this, Viet Nam advanced a new boundary line. It was only natural that Kampuchea should oppose this preposterous manoeuvre.¹⁰ (emphasis added)

8. This article remarks that establishing an "Indochina Federation" headed by Vietnam was only the first step of Vietnam's ambition in Southeast Asia. It also remarks that the Soviet Union, which referred to Vietnam as a "firm outpost of socialism in Southeast Asia", was Vietnam's supporter behind the scenes.¹¹

(iii) Document 03

9. **Document 03** is an editorial from *People's Daily* entitled 'Soviet and Vietnamese Hegemonists' True Colours' published in December 1978.¹² This article analyses Vietnam's long-held scheme to establish the "Indochina Federation" and its ambition in the whole Southeast Asia, as well as the relationship between Vietnam and the Soviet

⁹ 'Why Vietnamese Authorities Provoked Viet Nam-Kampuchea Border Conflict', *Beijing Review*, 21 Jul 1978, pp. 5-8, 25 (**Attachment 02**). The original article in Chinese was published in *People's Daily* on 12 July 1978.

¹⁰ *Ibid.*, p. 8.

¹¹ *Ibid.*, p. 8.

¹² 'Soviet and Vietnamese Hegemonists' True Colours', *Beijing Review*, 22 Dec 1978, pp. 16-19 (**Attachment 03**).

Union founded on a common interest in achieving their respective ambitions through cooperation. According to this article:

It is a notorious fact that the Soviet Union placed its stakes on the traitorous Lon Nol clique before the Kampuchean people won victory. Even then, the Soviet Union had the effrontery to send a message through Viet Nam to the leaders of the Kampuchean revolution, asking for the “establishment of contacts” with them and declaring shamelessly that the Soviet Union had the obligation to “safeguard the solidarity of the Indochina federation.”¹³ (emphasis added)

(iv) Document 04

10. **Document 04** is an article from *Beijing Review* in April 1979 entitled ‘Viet Nam’s Kampuchean Aggression: Eloquent Evidence’.¹⁴ It reports that the Chinese army captured two military documents from the Vietnamese army.

The first document describes the developments of the southwest border war and lists the major battles. It shows that Viet Nam’s military operation to invade Kampuchea began with its occupation of Way Island in 1975. The document says: “The Central Committee [of the Communist Party of Viet Nam] held the fourth plenum. The resolution adopted at the session confirms that U.S. imperialism is in the long term the main enemy, but the immediate enemy and the direct opponents in war are Beijing and Kampuchea.”

“Having adopted the Resolution (in June and July, 1978),” the document continues, “the Central Committee is resolved to win swift victory, politically and militarily, on the southwest border, This is the major, overriding task from beginning to end.”

11. The second document reportedly reveals the position of the Vietnamese authorities on the nature of Vietnam’s conflict with Cambodia as follows:

we had sufficiently prepared conditions so as to help the friendly side start a new revolution... this has but one precedent in the world, that is, the Soviet Union’s action to help Czechoslovakia in 1968. (emphasis added)

(v) Document 05

12. **Document 05** is an article entitled ‘Viet Nam’s Unsought Confession’ from *Beijing Review* in September 1978.¹⁵ It reports that:

Viet Nam had long planned to lay its hand on Kampuchea. This was admitted recently by Hoang Tung, Member of the Central Committee of the Communist Party of Viet Nam and Editor-in-Chief of *Nhan Dan*, to French journalists.

¹³ *Ibid.*, p. 19.

¹⁴ ‘Viet Nam’s Kampuchean Aggression: Eloquent Evidence’, *Beijing Review*, 6 Apr 1979, p. 24 (**Attachment 04**).

¹⁵ ‘Viet Nam’s Unsought Confession’, *Beijing Review*, 22 Sep 1978, pp. 23-24 (**Attachment 05**).

Hoang Tung revealed that in the years of 1970-72 Viet Nam had not intervened in Kampuchea only because there were differences within the leading stratum in Hanoi. This shows that the Hanoi leaders had long intended to subjugate Kampuchea and that the large-scale Vietnamese invasion of Kampuchea today is only the implementation of the plot for aggression in those years.

He said in a tone of regret and dismay: “There were several Vietnamese divisions in Cambodia at the time and Cambodia’s forces were limited. If we had intervened, the situation would have evolved differently. Perhaps we are now paying for that mistake.”¹⁶ (emphasis added)

(vi) Document 06

13. **Document 06** is an excerpt from an internal report on the international situations made by China’s Premier Zhou Enlai to the Communist Party of China in March 1973.¹⁷ The report remarks on the power struggle between the Soviet Union and the U.S. as well as the Soviet Union’s influence on the Indochina region. In particular, it reports that with regard to the 1973 Paris Peace Accord between Vietnam and the U.S., China differed from Vietnam on several issues:

[We felt that] in the Paris Agreements, only the Vietnam issue should be discussed; the problems of Cambodia and Laos should not be dragged in. Yet, the problems of the two countries [Cambodia and Laos] were still mentioned in the Agreements. This was not good because we cannot impose the Vietnam issue on these two countries.¹⁸

14. Concerning the influence of the Soviet Union, Zhou Enlai also remarked that:

3. The Soviet revisionists will intensify economic aid to the Vietnamese people after the Vietnam war comes to an end to balance out our influence in Vietnam. The struggle from now on will become complicated and acute.¹⁹

(vii) Document 07

15. **Document 07** is an excerpt from a speech on foreign policies presented by China’s Foreign Minister, Huang Hua, in July 1977.²⁰ In the speech, Huang Hua analyses the intense border conflict between Vietnam, Cambodia and Laos, and remarks that the sabotage and instigation by the social-imperialism was behind the escalation of the situation.

¹⁶ *Ibid.*, p. 23.

¹⁷ Excerpt from ‘Oppose the Two Superpowers: Chou En-lai’s Internal Report to the Party on the Problem of the Current International Situation, March 1973 (Excerpts)’, in King C. Chen (ed.), *China and the Three Worlds* (1979), pp. 183-193 (**Attachment 06**).

¹⁸ *Ibid.*, p. 187.

¹⁹ *Ibid.*, p. 187.

²⁰ Excerpt from ‘Problems with Indochina, Albania, and Yugoslavia (Excerpts)’, in King C. Chen (ed.), *China and the Three Worlds* (1979), pp. 268-272 (**Attachment 07**). The irrelevant portions of the speech are not included in the attachment.

the components of the Cambodian Liberation Army were extremely complex - some were the original royal troops who had come over, some were the Communist underground, others were organized by patriotic elements, and still more were organized by the oppressed peasants. Some of these troops were trained by us, others by Vietnam which was backed by Soviet revisionism. Thus, Soviet revisionism took advantage of this opportunity and infiltrated into certain units of the Cambodian forces.

After the liberation of Cambodia, simultaneous with the revamping of state organs, the Cambodians also revamped their army. They resolutely disbanded those military organs and units that had been infiltrated by Soviet revisionism, and arrested some impure elements, sending them to the military tribunals for trial, or ousting them permanently from the army, thereby purifying their ranks and strengthening their fighting strength. What they did was strictly their domestic affair and no one could criticize them for it. Still it caused dissatisfaction on the part of Soviet revisionism, which used it as an excuse to sow dissension between Vietnam and Cambodia, thereby further aggravating the contradiction between the two parties.²¹ (emphasis added)

(viii) Document 08

16. **Document 08** is a news report published in the *Beijing Review* on the late King Father Norodom Sihanouk's press conference in Beijing on 8 January 1979.²² According to this report, the late King Father condemned Vietnam's unjustified and unlawful aggression against Cambodia. He dismissed the narrative of Vietnam, the Soviet Union and Warsaw Pact countries that it was simply a civil war in Cambodia. He pointed out that:

The press in all countries of the world and everybody know that without the Vietnamese the so-called 'national united front of national salvation of Kampuchea' cannot do anything against us, against our country, against our national independence.²³

17. The late King Father warned countries in Southeast Asia that the Soviet Union backed aggression would not stop at Cambodia.²⁴
18. Despite having differences over some internal policies of the government of Democratic Kampuchea ('DK'), the late King Father referred to Pol Pot as "a patriot" and remarked that:

His external policy is good. His determination to defend the territorial integrity, national dignity and national independence is good. I will continue to support him. People do support him.²⁵

²¹ *Ibid.*, p. 270.

²² 'Samdem Norodom Sihanouk Denounces Viet Nam's Aggression', *Beijing Review*, 12 Jan 1979, pp. 13-15 (**Attachment 08**).

²³ *Ibid.*, p. 13.

²⁴ *Ibid.*, pp. 14-15.

²⁵ *Ibid.*, p. 15.

19. The late King Father revealed that he made five or six tours to the countryside of Cambodia in the past three years. He observed that:

I have been able to visit some provinces along the Big Lake. The people there work very hard. They are not unhappy. On the contrary, they smile. I hear songs, not love songs, but revolutionary songs. These songs are not so bad. The children play and freely eat bananas in the gardens of their co-operatives. The food in the co-operatives are not bad, though not as good as mine. The people are not skinny. They are well fed. The life there is good, really good.²⁶

(ix) Document 09

20. **Document 09** is a book entitled ‘The Kampuchean Problem in Thai Perspective: Positions and Viewpoints Held by Foreign Ministry Officials and Thai Academics’.²⁷ It compiled the views and positions of Thai Foreign Ministry officials as well as some Thai scholars on the nature of Vietnam’s invasion of Cambodia.
21. When asked whether Vietnam’s dependency on the Soviet Union was due to ASEAN’s policies, the Thai officials responded:

Vietnam decided on its own to depend on the Soviet Union, when it decided to embark upon its Kampuchean “adventure”. The Hanoi government realized that the Soviet Union was the only country which would help realize its aim for an invasion and occupation of Kampuchea.

The ASEAN states and others in the international community decided to suspend their assistance to Vietnam to show that what Vietnam had done was not right and was opposed by the world [...]²⁸

22. The Thai officials stated that they “ha[d] proof of the Vietnamese intention to establish the Federation of Indochina”. Despite Vietnam’s claim that “Indochina Federation” was “a thing of the past”, the Thai officials believed that the so-called “special relationship” between Vietnam, Laos and the new Heng Samrin government in Cambodia was similar to the “limited sovereignty” concept used by the Soviet Union in its relations with Eastern European bloc countries.²⁹
23. During negotiations aimed at solving the problems caused by Vietnam’s invasion and occupation of Cambodia, Vietnam made a so-called “five-point proposal” which centred around the “removal of Pol Pot and his associates” and called for “[a] process of self-

²⁶ *Ibid.*, p. 15.

²⁷ Institute of Asian Studies, *The Kampuchean Problem in Thai Perspective: Positions and Viewpoints Held by Foreign Ministry Officials and Thai Academics* (1985) (**Attachment 09**).

²⁸ *Ibid.*, pp. 11-12.

²⁹ *Ibid.*, pp. 27-29.

determination for the Kampuchians by free general elections excluding Pol Pot and his associates”.³⁰ The Thai officials considered it against the principle of self-determination to exclude the Pol Pot faction from the general election in Cambodia.³¹ The Thai officials remarked that the demand to eliminate Pol Pot and Ieng Sary was “only another Vietnamese tactic” supported by the Soviet Union.³²

Vietnam has been trying to conceal the real problem by raising the spectre of Pol Pot and Ieng Sary all the time and many people now tend to believe that the two Khmer Rouge leaders are responsible for the Kampuchean problem, which could be resolved, if they were to be eliminated.³³

24. The Thai officials warned, however, that people must not forget that “the root cause of the problem” was that “Vietnam invaded and occupied Kampuchea and then set up a puppet government in Phnom Penh”.³⁴ The Thai officials believed that it should be the people of Cambodia, rather than Vietnam, who would decide whether Pol Pot’s faction was desirable. In this regard, the Thai officials recalled that “Prince Sihanouk has said the Khmer Rouge cannot conduct any military operation inside Kampuchea without the support of the Kampuchean people.”³⁵
25. This book also recorded an interview with Dr. Khien Theeravit, a Thai professor of international relations and political science, and his opinions on the Vietnam-Cambodia conflict. Professor Khien dismissed Vietnam’s claim that it had to overthrow Pol Pot government because of the latter’s “genocidal policy” as nothing but an excuse.³⁶ He commented that:

Vietnam’s contention is used as a diplomatic tactic. Vietnam realises that the image of Pol Pot government has been bad and it has used it in order to find support from those forces both within and outside Kampuchea opposing the Pol Pot administration with considerable success, although it is known that Vietnam’s action was a justification rather than a real reason for invading and occupying Kampuchea.³⁷

26. He also remarked that:

Vietnam’s condemnation on the Pol Pot government is not justified because *Vietnam was also to be blamed for the mass killings in Kampuchea between 1975-1978,*

³⁰ *Ibid.*, p. 47.

³¹ *Ibid.*, p. 35.

³² *Ibid.*, p. 41.

³³ *Ibid.*, p. 50.

³⁴ *Ibid.*, pp. 50, 42.

³⁵ *Ibid.*, pp. 49-51.

³⁶ *Ibid.*, pp. 65-66.

³⁷ *Ibid.*, pp. 66-67.

*because Vietnam also took part in supporting the power struggle in Kampuchea.*³⁸
(emphasis added)

B. Admissibility

27. The proposed documents existed before the start of the trial. However, due to the limited resources and the restriction on the capacity of the defence before the ECCC to conduct independent investigations, the Defence only obtained the documents after the beginning of the trial of Case 002/02. In any event, the Defence submits that the proposed documents are conducive to ascertaining the truth and that the interest of justice requires that they be admitted into evidence.
28. The proposed documents are *prima facie* reliable and relevant to various issues in dispute in Case 002/02, including armed conflict and “internal purges”. **Document 08** is also relevant to worksites and cooperatives. Moreover, these documents, taken together with the evidence already on the record, directly or indirectly support the core of the Defence case, in particular, that there were conflicting factions within the Communist Party of Kampuchea and that one of the factions was supported by and colluding with Vietnam to overthrow the legitimate government of DK led by Pol Pot.³⁹

IV. RELIEF

29. For the above reasons, the Defence requests that the Trial Chamber admit into evidence the nine documents annexed hereto.

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

³⁸ *Ibid.*, p. 66.

³⁹ For relevance of the internal factions and rebellion, *see, e.g.*, **E395/2**, ‘Nuon Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to His Individual Criminal Responsibility in Case 002/02’, 10 Jun 2016.